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Twenty-ninth session

SUMMARY RECORD OF THE 598th MEETING

Held at Headquarters, New York,
on Thursday, 6 June 1996, at 3 p.m.

Chairman: Mrs. PIAGGI de VANOSSI (Argentina)

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The meeting was called to order at 3.30 p.m.

ELECTION OF OFFICERS (continued)

1. Ms. EKEMEZIE (Nigeria) nominated Mr. S. Thuita Mwangi (Kenya) for the office of Vice-Chairman.

2. Mr. S. Thuita Mwangi (Kenya) was elected Vice-Chairman by acclamation.

ELECTRONIC DATA INTERCHANGE: DRAFT MODEL LAW; POSSIBLE FUTURE WORK (continued) (A/50/17; A/CN.9/421)

Draft article "x" (continued)

3. Mr. CHANDLER (United States of America) introduced the revised version of paragraph 3, which read: "Where one or more data messages have been used to effect any of the actions in paragraph 1 (f) or (g) of this article, and a paper document is subsequently to be used to effect any such action, no such paper document is effective for the purpose of law mentioned in paragraph 4 of this article, unless, as between the person subject to the obligation to deliver and the holder of a right acquired by means of a data message, the use of data messages for this purpose has ceased to be valid, and unless the paper document contains a statement that data messages may no longer validly be used for such purposes in place of the paper document. Any such replacement of a data message by a paper document shall not have the effect of modifying any existing right or obligation."

4. He introduced the revised version of article 4, which read: "Under a contract of carriage, if a right is to be granted to, or an obligation is to be acquired by, one person and no other person, and if the law requires that, in order to effect this, the right or obligation must be conveyed to that person by the transfer, or use of, a paper document, the requirement of that law is satisfied if the right or obligation is conveyed by any means which includes the use of one or more data messages, provided a method is used to give reliable assurance that the right or obligation becomes vested in the intended person and in no other person."

5. Mr. HOWLAND (United Kingdom) commended the United States delegation for its work on paragraph 3 of article "x" and for achieving a considerable degree of harmony. While the draft of paragraph 3 was not exceedingly long, he suggested, for purposes of clarity, that the text should be broken up by inserting a colon after the word "unless", a small (a) before the words "as between" and a small (b) before the words "the paper document contains". The last sentence should appear as a new paragraph.

6. Mr. ALLEN (United Kingdom) favoured retaining the expression "rule of law", as opposed to "law", in paragraph 3, since the sentence referred to paragraph 4, which used the term "rule of law".

7. Mr. TELL (France) said that it would be extremely difficult for members of the Commission to consider the revised versions of paragraphs 3 and 4 without a copy of the text in English and the other official languages.

8. Mr. RENGER (Germany), supporting the representative of France, said that his delegation could not consider or endorse the revised versions of paragraphs 3 or 4 if it did not have before it the text in printed form, which under normal procedures, should have been distributed as a working paper.

9. Mr. SORIEUL (International Trade Law Branch), confirming the views of the representatives of France and Germany, said that it was not possible for the Commission to consider the paragraphs in question without a copy of the text in all official languages. Accordingly, he proposed that the Commission should wait for the other language translations to be issued before continuing consideration of paragraphs 3 and 4 of article "x".

10. Mr. CHANDLER (United States of America) said that he understood the concerns of the Commission regarding the need for a printed text of paragraph 3. However, he proposed that the Commission should discuss paragraph 4, which had undergone only slight changes.

11. Mr. MADRID (Spain) requested that copies of the text should be made available to all delegations at least in the English version.

12. Mr. DONG Yi (China) agreed with previous speakers that the amendments to paragraphs 3 and 4 were considerable and that all delegations should be in possession of a printed text before considering those amendments, if not in translation, then at least in English.

13. Mr. HOWLAND (United Kingdom) said paragraph 4 had only been slightly revised to incorporate amendments that had been discussed and agreed upon at an earlier meeting.

14. The CHAIRMAN suggested that if all delegations agreed, the Commission should consider paragraph 4 since the changes to it were minor and the original text of that paragraph appeared in the annex to document A/CN.9/421.

15. Mr. LLOYD (Australia) asked why the words "under a contract of carriage" had been added to the beginning of paragraph 4.

16. Mr. CHANDLER (United States of America) said that the words "under a contract of carriage" had been added at the beginning of paragraph 4 in response to the concern expressed by a number of delegations, including China, that the paragraph might, if taken out of context, be interpreted too broadly. However, the additional phrase could be considered redundant in the light of paragraph 1, and his delegation would not object if the Commission preferred to delete it.

17. Mr. LLOYD (Australia) said that his delegation had no objection to the proposed amendments. However, it would be necessary to use the words "the requirement of that law" rather than "the requirement of that rule" in the third line of the paragraph.

18. Mr. MAZZONI (Italy) said that, according to Italian law, under a bill of lading, rights could be transferred either by endorsement and physical delivery of the paper or "by consent" which did not involve delivery of the document. Consequently, there might be some ambiguity as to which of those methods was to be replaced by the use of a data message.

19. He noted also that there was some circular logic in the proposed wording, which seemed to say that the right became vested when conveyance was effected, and vice versa.

20. Mr. ABASCAL (Mexico), supported by Mr. MADRID (Spain), said that the words which had been added at the beginning of the paragraph should be deleted; the paragraph might be needed for transactions other than contracts of carriage.

21. Mr. CHANDLER (United States of America), replying to the representative of Italy, said that in international commerce, only the physical delivery of the paper document was acceptable. One of the major advantages of using electronic transfer was that, being instantaneous, it avoided delays caused by the time required for that delivery. A system of transfer "by consent" was a bad practice; it could not and should not continue once an EDI system was introduced.

22. Mr. HOWLAND (United Kingdom) said that paragraph 4 was intended solely to remove a legal impediment to the use of electronic means instead of paper documents, where such an impediment existed.

The meeting was suspended at 4.35 p.m. and resumed at 5.20 p.m.

23. Mr. MAZZONI (Italy) suggested the following wording for paragraph 4: "Provided that the method used to effect such conveyance is reliable enough as to designate as sole addressee (beneficiary) of such data message the intended person only and no other person." He suggested that the text should be taken up by the drafting group.

24. Mr. HOWLAND (United Kingdom) proposed the following wording: "Provided a method is used to give a reliable assurance that no other data message has been or may be used by the transferor for the purpose of transferring such right or obligation to more than one person at any given time."

25. Mr. SORIEUL (International Trade Law Branch) said that the drafting group was a technical group and could not be asked to settle matters of substance. Time was running out; priority must be given to adopting the Model Law. Interested delegations would have to meet in an ad hoc working group, and if the resulting text was fairly close to the current article 4, it could be taken up at once. Otherwise, the proposals would have to be typed out and translated before they could be considered by the Commission.

26. Mr. LLOYD (Australia) said that the United Kingdom proposal did not solve the problem posed by the fact that methods could not give assurances - only people could. The Italian proposal avoided the problem, but was a little vague. He would prefer to use wording such as "a reliable method is used to ensure".

27. Mr. CHANDLER (United States of America) said that the Commission seemed to be looking for a degree of certainty that could never be achieved. The deeper it went into the details of transference, the more it would intrude upon system rules. Both the Italian proposal and the United Kingdom proposal went too far. It might be better to retain the existing text, with minor drafting changes. The more the Commission tried to add to the provision, the more unwieldy it would become.

28. Mr. MADRID (Spain) said that the Model Law already used the term "method", for example in article 6, paragraph 1 (b), which also referred to the concept of reliability. The question of reliability had been taken up in the Working Group and by the Commission itself, and the consensus seemed to be that the Commission should not lay down requirements for data messages and electronic communications that were more stringent than those applied to paper-based communications, from which fraud and discrepancies could not be completely eliminated. While the Commission had to establish a method which inspired confidence, it could not expect to prevent fraud in all cases.

29. He agreed that consensus seemed to have been reached on the paragraph and that only minor drafting changes were needed; there was therefore no need to raise matters of substance that went beyond the consensus that had been achieved.

30. Mr. FALVEY (Observer for the International Association of Ports and Harbors) said that his organization supported the United States proposal but wished to suggest that in addition the Guide to Enactment should refer to the guarantee of singularity as the purpose of paragraph 4. In that way, the Commission would close the circle.

31. Mr. SANDOVAL LÓPEZ (Chile) and Mr. MASUD (Observer for Pakistan) said that they supported the United States proposal.

32. Mr. ZHANG Yuqing (China) said that the existing draft should be retained. The submission of new proposals only prolonged the debate, and his delegation did not feel that any of the new proposals improved on the existing text.

33. His delegation had some difficulties with the phrase "by any means which includes the use of one or more data message" and would prefer to delete it. If a country stipulated that a paper document had to be used to convey a right or obligation, there was only one means; if the Commission was trying to expand the scope of the means of conveying rights and obligations to include data messages, then there would be two means, so that the rule would be satisfied if the right or obligation was conveyed by one or more data messages. The existing wording gave the impression that the Commission was trying to expand the application of domestic law.

34. Mr. ABASCAL (Mexico) said that it could be difficult to establish very strict requirements in paragraph 4. The Commission seemed to be seeking a degree of assurance that did not exist even in paper documents. The technology for providing such a level of assurance did not exist, so that if the Commission established such a requirement, it would effectively be prohibiting the transfer of rights through data messages. He suggested that instead of the words

"reliable assurance", the Commission should use terms regularly used in international trade contracts, such as "a reasonable method in the circumstances". That would accommodate the rules of the Comité maritime international, since adopting those rules would be reasonable in the circumstances.

35. The CHAIRMAN asked whether the Commission could agree to retain the original text, or whether it preferred the United States proposal.

36. Ms. GUREYEVA (Russian Federation) said that her delegation partially supported the United States proposal, but also supported the Chinese proposal.

37. Mr. MAZZONI (Italy) said that there was no divergence of opinion about the purpose of paragraph 4. If the majority of delegations favoured retaining the last phrase of the paragraph, his delegation would have to place its opposition on record.

38. The CHAIRMAN said that the Commission would have to continue its consideration of paragraph 4 at the next meeting.

The meeting rose at 6.05 p.m.